

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

**FILED**

OCT 13 2015

KERMIT POULSON,

Plaintiff,

vs.

ATTORNEY GENERAL of the STATE  
OF MONTANA, KEN PARK,  
KALISPELL POLICE DEPARTMENT,  
TED LYMPUS, NICK AEMISEGGER,  
and SGT. RICHTER,

Defendants.

CV 14-185-M-DLC-JCL Missoula

Clerk, U.S. District Court  
District Of Montana  
Missoula

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendations in this case on April 24, 2015, recommending Defendants Ken Park, Kalispell Police Department, Judge Lympus, Nick Aemisegger, the Montana Attorney General Tim Fox, Pathways, Kalispell Regional Medical Center, and Sgt. Larry Posha, and all claims against them, be dismissed. Poulson timely objected to the Findings and Recommendations and so the Court will conduct *de novo* review of the record. 28 U.S.C. § 636(b)(1). The portions of the Findings and Recommendations not specifically objected to will be reviewed for clear error.

*McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm

conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000). Since the parties are familiar with the facts of this case, they will only be repeated below as necessary to explain the Court’s order. For the reasons listed below, the Court adopts Judge Lynch’s Findings and Recommendations in full.

Plaintiff objects to Judge Lynch’s findings and requests issuance of a subpoena of Gabe Skibsrud, who Plaintiff alleges is engaged in criminal activity. Plaintiff appears to wish to subpoena Skibsrud in order to challenge his underlying arrest. His conviction was based on this arrest and has not been invalidated. As such, Poulson’s claims regarding his arrest and subsequent conviction are barred by the doctrine set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994).

Plaintiff also appears to object to Judge Lynch’s recommendation that the claims against all Defendants, except Sgt. Richter, be dismissed. He reiterates his allegations of mis-treatment at Missoula Sanction and Assessment Center, naming Mark Johnson, Captain Kowalski, Paul Sells, Sgt. Richter, and other medical staff as the responsible parties. This is the first mention of these persons, who are not listed as defendants in this case. It appears that Plaintiff seeks to amend his amended complaint to add defendants. Plaintiff has repeatedly failed to cure deficiencies after numerous supplements and an amended complaint. Further, his

claims against all defendants, except Sgt. Richter, are dismissed and therefore further amendment would be futile. *Foman v. Davis*, 371 U.S. 178 (1962); *Sharkey v. O'Neal*, 778 F.3d 767 (9th Cir. 20015); *Nunes v. Ashcroft*, 348 F.3d 815 (9th Cir. 2003).

There being no clear error in Judge Lynch's remaining Findings and Recommendations,

IT IS ORDERED that Judge Lynch's Findings and Recommendations (Doc. 14) are ADOPTED IN FULL.

IT IS FURTHER ORDERED that Defendants Ken Park, Kalispell Police Department, Judge Lympus, Nick Aemisegger, the Montana Attorney General Tim Fox, Pathways, Kalispell Regional Medical Center, and Sgt. Larry Posha, and all claims against these Defendants, are DISMISSED.

DATED this 12<sup>th</sup> day of October, 2015.

  
Dana L. Christensen  
Dana L. Christensen, Chief Judge  
United States District Court